



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/149424

PRELIMINARY RECITALS

Pursuant to a petition filed May 16, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on June 04, 2013, at Kenosha, Wisconsin.

NOTE: The record was held open to allow Community Care, Inc. to submit notes regarding a conversation between Ms. Motley and Petitioner's personal care worker. The document has been marked as Exhibit 4 and entered into the record.

The issue for determination is whether Community Care, Inc. (Community Care) correctly reduced Petitioner's Personal Care and Supportive Home Care service hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Valerie Haisler, RN Case Manager; Tracy Motley, Care Manager; Dawn Riedel,
Supervisor; Karen Buono, Kenosha Family Care Manager
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner is 59 years old and suffers the effects of a traumatic brain injury and stroke (CVA), including paralysis, decreased memory, confusion, and anxiety disorder. She is unable to bear weight and uses a wheelchair to ambulate. (Exhibit 3, pg. 7)

3. On December 1, 2012, Community Care completed an In-Home Assessment Tool (I-HAT) and allocated the following times for the following Activities of Daily Living (ADLs):

Showering	45 minutes per day	315 minutes per week
Undressing/Dressing (2x per day)	34 minutes per day	238 minutes per week
Hair Care	11 minutes per day	77 minutes per week
Cleaning Dentures	5 minutes per day	35 minutes per week
Eye Glass Care	6 minutes per day	42 minutes per week
Nail Care (9x per month)	108 minutes per month	27 minutes per week
Lotion Application	8 minutes per day	56 minutes per week
Medication Reminders (2x per day)	10 minutes per day	70 minutes per week
Sliding Board Transfer	9 minutes per day	63 minutes per week

923 minutes or 15.4 hours per week

(Exhibit 3, pg. 24)

4. The December 1, 2012, I-HAT allocated the following times for the following Routine Homemaking tasks:

Cleaning Bedroom		15 minutes per week
Cleaning Bathroom		16 minutes per week
Meal Preparation (3x per day)	81 minutes per day	567 minutes per week
Clean up dishes	15 minutes per day	105 minutes per week
Grocery/Shopping (2x per month)	240 minutes per month	60 minutes per week
Linen change (7x per week)		91 minutes per week
Laundry on-site (7x per week)		210 minutes per week
Clean DME		15 minutes per week
Vacuuming & Dusting		32 minutes per week
Sweeping/Mopping		20 minutes per week

1131 minutes or 18.8 hours per week

(Exhibit 3, pg.25)

5. On May 1, 2013, Community Care conducted an annual review and completed a new I-HAT. The following time were allotted for the following ADLs:

Showering	45 minutes per day	315 minutes per week
<i>Undressing/Dressing (2x per day)</i>	<i>time was eliminated</i>	
Hair Care	11 minutes per day	77 minutes per week
Cleaning Dentures	5 minutes per day	35 minutes per week
Eye Glass Care	6 minutes per day	42 minutes per week
<i>Nail Care (5x per month)</i>	<i>60 minutes per month</i>	<i>15 minutes per week</i>
Lotion Application	8 minutes per day	56 minutes per week
<i>Medication Reminders (1x per day)</i>	<i>5 minutes per day</i>	<i>35 minutes per week</i>
Sliding Board Transfer	9 minutes per day	63 minutes per week

638 minutes or 10.63 hours per week

(Exhibit 3, pg. 22)

6. The May 1, 2013 I-HAT allocated the following times for the following Routine Homemaking tasks:

Cleaning Bedroom	<i>no longer a category</i>	
Cleaning Bathroom	<i>no longer a category</i>	
<i>Regular Housekeeping-Apartment</i>		<i>90 minutes per week</i>
<i>Enhanced Housekeeping (2x per week)</i>		<i>126 minutes per week</i>
<i>Meal Preparation (2x per day)</i>	<i>58 minutes per day</i>	<i>406 minutes per week</i>
Clean up dishes	<i>no longer a category</i>	
Grocery/Shopping (2x per month)	<i>132 minutes per month</i>	<i>33 minutes per week</i>
<i>Linen change (4 x per week)</i>		<i>52 minutes per week</i>
<i>Laundry on-site (4x per week)</i>		<i>120 minutes per week</i>
<i>Clean DME</i>	<i>eliminated</i>	
Vacuuming & Dusting	<i>no longer a category</i>	
Sweeping/Mopping	<i>no longer a category</i>	

827 minutes or 13.78 hours per week

(Exhibit 3, pg.23)

7. On May 9, 2013, Community Care sent Petitioner a Notice of Action indicating that it was reducing her personal care service hours from 15.5 hours per week to 9.5 hours per week and that it was reducing her supportive home care hours from 19 hours per week to 13.25 hours per week. (Exhibit 3, pgs. 33-36)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 16, 2013.

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. It is, in short, a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Community Care, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services

that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

The aforementioned administrative code further notes that personal care and supportive home care services are among the services that typically will be required to be available. *Id.*

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the reduction of services, the agency bears the burden to prove it correctly reduced the services.

In the case at hand, Petitioner filed an appeal because Community Care reduced her personal care service hours from 15.5 hours per week to 9.5 hours per week and that it was reducing her supportive home care hours from 19 hours per week to 13.25 hours per week.

Personal Care Service Hours

Looking at the reduction in hours, it appears that the change in personal care service hours resulted from three things:

1. Elimination of time for undressing/dressing
2. The reduction in nail care from nine times per month to five times per month, and
3. A reduction in time for medication reminders from twice per day to once per day.

Valerie Haisler, Petitioner's RN Case Manager testified that she completed the I-Hat with Petitioner and her Personal Care Worker, Cathy Lovingfoss. Ms. Haisler testified credibly that Petitioner and Ms. Lovingfoss reported that Petitioner is able to dress herself independently and that Petitioner demonstrated her ability to put on her socks and shoes. Tracy Motley, Petitioner's Care Manager testified that she was also present when Ms. Lovingfoss confirmed Petitioner's ability to dress herself. At the hearing Petitioner testified that she is, in fact, able to pull her pants on, pull a t-shirt over her head and get her underwear on. Based upon the foregoing, it is found that the agency correctly eliminated time for undressing/dressing.

Ms. Haisler testified that the frequency for nail care was changed from nine times per month to five times per month to make a correction in the actual number of times Ms. Haisler needed her fingernails and toenails trimmed. Allowing for nail care five times per month is reasonable and there is no evidence in the record that Ms. Haisler has any hand, foot or nail conditions that would require nail care more frequently or that would require additional time per episode of nail care. Thus, the agency correctly reduced the time for nail care.

Ms. Haisler testified that the frequency for medication reminders was reduced from twice per day to once per day, because Petitioner's medications are now delivered to her once per day. Petitioner did not refute this information. Consequently, it is found that the agency correctly reduced Petitioner's time for medication reminders.

While Community Care correctly reduced Petitioner's Personal Care Service Hours on the I-Hat, it should be noted that Community Care made an error in its Notice of Action. According to the Notice of Action, Community Care was approving 9.5 hours of Personal Care Service Hours. (See Exhibit 3, pg. 33) However, the information contained in the May 1, 2013 I-HAT, the total time allotted by Community Care was 638 minutes per week or 10.63 hours per week, which Community Care rounded down to 10.5 hours per week. (See Exhibit 3, pg. 23) There is no explanation in the record for the discrepancy between the I-Hat and the Notice of Action, other than error. Thus, Community Care will have to issue a new Notice of Action approving the correct number of hours, which should be rounded up to 10.75 hours or 43 units per week.

Supportive Home Care Hours

A number of changes occurred that affected Petitioner's Supportive Home Care Hours. First, the I-Hat completed on May 1, 2013, consolidated the categories of Cleaning Bedroom, Cleaning Bathroom, Clean-up Dishes, Vacuuming & Dusting and Sweeping/Mopping into the categories of Regular Housekeeping and Enhanced Housekeeping.

In December 2012, Petitioner was previously approved for:

Cleaning Bedroom		15 minutes per week
Cleaning Bathroom		16 minutes per week
Clean up dishes	15 minutes per day	105 minutes per week
Vacuuming & Dusting		32 minutes per week
Sweeping/Mopping		20 minutes per week

188 minutes per week

The new I-Hat approved 90 minutes per week for Regular Housekeeping and 126 minutes per week for Enhanced Housekeeping, for a total of 216 minutes per week. Thus, Petitioner has received an increase in time for cleaning/housekeeping tasks. There is nothing in the record to support a finding that the agency erred in increasing this time.

The second change was a reduction in meal preparation time. The frequency was reduced from three times per day to twice per day, though the time allotted for each episode was increased from 27 minutes per episode to 29 minutes per episode. Ms. Haisler testified that the frequency was reduced because Petitioner's aide was coming only twice per day to prepare meals and during one of those visits, would prepare two meals. Petitioner provided no evidence to refute this information. Consequently, it is found that Community-Care correctly reduced the frequency of services for meal preparation.

The third change affected the amount of time allowed per episode of grocery shopping. The frequency of shopping allowed remained at twice per month. However, the time allowed for each episode was reduced from 120 minutes to 66 minutes. Ms. Haisler testified that it was a mistake to allow 120 minutes and that 66 minutes should have been allowed. However, Community Care did not make clear why it was an error to allow Petitioner 120 minutes for each shopping trip or why 66 minutes was more reasonable. Consequently, Community Care has not met its burden to prove that it correctly reduced Petitioner's time for shopping.

The fourth change affected the time allowed for on-site laundry. The frequency of the service was reduced from seven days per week to four days per week. Ms. Haisler testified that this occurred because Ms. Lovingfoss indicated that laundry is not always done on a daily basis and she estimated laundry being done four times per week. Community Care's summary indicates that an agreement concerning the frequency with which laundry could be done came after some negotiation. At the hearing, Ms. Lovingfoss testified that Petitioner sometimes does need laundry done more frequently, because she experiences episodes of incontinence. However, Ms. Haisler testified that Community Care was trying to work with Petitioner to find an incontinence product to help her, so she does not need to change clothes as frequently.

Looking at the totality of the circumstances, it is found that Community Care correctly reduced the frequency of laundry services, based upon the representations of Ms. Lovingfoss to Ms. Haisler at the time the I-Hat was completed.

The fifth change affected time allowed for linen changes. The frequency of the service was reduced from seven days per week to four times per week. Ms. Lovingfoss, in her testimony, stated that linen changes are done four times per week. Accordingly, it is found that Community Care correctly reduced the time allotted for linen changes.

The sixth and last change affected the cleaning of durable medical equipment. The December 2012 I-Hat allowed 15 minutes per week for this service. However, the May 1, 2013 I-Hat eliminated this service. Community Care provided no explanation for this. Consequently, it has not met its burden to show that it acted correctly.

I note that it was undisputed among the parties that although Petitioner can eventually dress herself, that she is not always able to select clothing appropriate for the weather, nor is she able to make sure her clothes are on correctly. As such, it would be prudent to allow time for supervision in the amount of 10 minutes per day, seven days per week.

In summary Petitioner's Supportive Home Care Hours should be:

Regular Housekeeping-Apartment	90 minutes per week
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Enhanced Housekeeping (2x per week)		126 minutes per week
Meal Preparation (2x per day)	58 minutes per day	406 minutes per week
Grocery/Shopping (2x per month)	240 minutes per month	60 minutes per week
Linen change (4 x per week)		52 minutes per week
Laundry on-site (4x per week)		120 minutes per week
Clean DME		15 minutes per week
Supervision		70 minutes per week

939 minutes or 15.65 hours per week

Petitioner testified that she exaggerated her abilities because she is afraid of her interdisciplinary team and feels they are conspiring to put her in a nursing home. However, Petitioner's testimony and Ms. Lovingfoss's testimony supported, in large part, the changes made by Community Care.

Petitioner should note that if her condition changes and she needs additional service hours, she must contact her interdisciplinary team and be forthright with them.

CONCLUSIONS OF LAW

1. Community Care incorrectly reduced Petitioner's personal care service hours to 9.5 hours per week.
2. Community Care incorrectly reduced Petitioner's supportive home care service hours to 13.25 hours per week.

THEREFORE, it is

ORDERED

That Community Care issue a new Notice of Action approving 10.75 hours (43 units) per week of personal care service hours and 15.75 hours (63 units) per week of supportive home care hours. Community Care shall take all administrative steps necessary to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

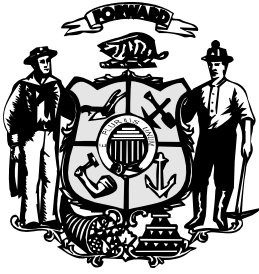
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy

should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of July, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 12, 2013.

Community Care Inc.
Office of Family Care Expansion